

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON VICINAGE

ASSOCIATION OF NEW JERSEY RIFLE
& PISTOL CLUBS, INC., BLAKE
ELLMAN, and MARC WEINBERG,

Plaintiffs,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of New Jersey, PATRICK J. CALLAHAN, in his official capacity as Superintendent of the New Jersey Division of State Police, RYAN MCNAMEE, in his official capacity as Chief of Police of the Chester Police Department, and JOSEPH MADDEN, in his official capacity as Chief of Police of the Park Ridge Police Department,

Defendants.

HON. PETER G. SHERIDAN

Civil Action No.
3:18-cv-10507

MARK CHEESEMAN, TIMOTHY CONNELLY, and FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

MATTHEW J. PLATKIN, in his official capacity as Acting Attorney General of New Jersey, PATRICK J. CALLAHAN, in his official capacity as Superintendent of the New Jersey

HON. RENEE M. BUMB

Civil Action No.
1:22-cv-4360

State Police, CHRISTINE A. HOFFMAN, in her official capacity as Acting Gloucester County Prosecutor, and BRADLEY D. BILLHIMER, in his official capacity as Ocean County Prosecutor,

Defendants.

BLAKE ELLMAN, THOMAS R. ROGERS, and ASSOCIATION OF NEW JERSEY RIFLE & PISTOL CLUBS, INC.,

Plaintiffs,
v.

MATTHEW J. PLATKIN, in his official capacity as Attorney General of New Jersey, PATRICK J. CALLAHAN, in his official capacity as Superintendent of the New Jersey Division of State Police, LT. RYAN MCNAMEE, in his official capacity as Officer in Charge of the Chester Police Department, and KENNETH BROWN, JR., in his official capacity as Chief of the Wall Township Police Department,

Defendants.

HON. PETER G. SHERIDAN

Civil Action No.
3:22-cv-04397

DECLARATION OF DANIEL M. VANNELLA

DANIEL M. VANNELLA, being of full age, hereby declares as follows:

1. I am licensed to practice law in the State of New Jersey and before the United States District Court for the District of New Jersey. I am employed as an Assistant Attorney General of the State of New Jersey, and in that capacity I represent State Defendants in the above-captioned consolidated matters. I am fully familiar with the facts to which I now certify.

2. For purposes of clarity, the Plaintiffs in the matters of *Association of New Jersey Rifle & Pistol Clubs v. Platkin*, No. 18-10507, and *Ellman v. Platkin*, No. 22-4397, shall be referred to collectively as “ANJRPC Plaintiffs” in this Declaration. That term therefore does *not* include the Plaintiffs from the remaining matter of *Cheeseman v. Platkin*, No. 22-4360. Further, all citations to “ECF ___” refer to the *Association of New Jersey Rifle & Pistol Clubs* docket, No. 18-10507.

3. This Declaration is being submitted in support of the following: State Defendants’ Cross-Motion for Summary Judgment (ECF 183); State Defendants’ Motion to Exclude Testimony of Emanuel Kapelsohn and Clayton Cramer, and to Strike Supplemental Productions of Mr. Kapelsohn and Mr. Cramer (ECF 182); and State Defendants’ Opposition to Plaintiffs’ “Motion to Exclude Certain Expert Testimony” filed on October 6, 2023 (ECF 181; *see* ECF 176). The foregoing motion papers were all filed on the Court’s ECF docket on November 3, 2023, prior to the filing of this Declaration.

4. Attached as **Exhibit 1** is a true and accurate copy of State Defendants' letter provided to the other parties, dated May 15, 2023, identifying their proposed affirmative experts, as per the Court's March 16, 2023 pretrial scheduling order.

5. Attached as **Exhibit 2** is a true and accurate copy of *ANJRPC* Plaintiffs' letter to the parties, dated May 15, 2023, identifying their proposed affirmative experts, as per the Court's March 16, 2023 pretrial scheduling order, which State Defendants had received.

6. Attached as **Exhibit 3** is a true and accurate copy of an October 20, 2023 declaration of Saul Cornell, attaching a copy of his expert report (including exhibit) dated June 2, 2023, which was served on the parties.

7. Attached as **Exhibit 4** is a true and accurate copy of an October 20, 2023 declaration of Robert Spitzer, attaching a copy of his expert report (including exhibits) dated June 7, 2023, which was served on the parties.

8. Attached as **Exhibit 5** is a true and accurate copy of an October 20, 2023 declaration of Randolph Roth, attaching a copy of his expert report (including exhibit) dated June 8, 2023, which was served on the parties.

9. Attached as **Exhibit 6** is a true and accurate copy of an October 20, 2023 declaration of Dennis Baron, attaching a copy of his expert report (including exhibit) dated June 15, 2023, which was served on the parties.

10. Attached as **Exhibit 7** is a true and accurate copy of an October 25, 2023 declaration of Lucy Allen, attaching a copy of her expert report (including exhibits) dated June 16, 2023, which was served on the parties.

11. Attached as **Exhibit 8** is a true and accurate copy of an October 20, 2023 declaration of Stephen Hargarten, attaching a copy of his expert report (including exhibits) dated June 7, 2023, which was served on the parties. An additional copy of the PowerPoint file attached to this report as Exhibit B, including its embedded videos, will be submitted to the Court and opposing counsel on USB drives.

12. Attached as **Exhibit 9** is a true and accurate copy of an October 31, 2023 declaration of Louis Klarevas, attaching a copy of his expert report (including exhibits) dated June 13, 2023, which was served on the parties.

13. Attached as **Exhibit 10** is a true and accurate copy of an October 20, 2023 declaration of Daniel Webster, attaching a copy of his expert report (including exhibits) dated June 7, 2023, which was served on the parties.

14. Attached as **Exhibit 11** is a true and accurate copy of an October 24, 2023 declaration of James Yurgealitis, attaching a copy of his expert report (including exhibits) dated June 15, 2023, which was served on the parties.

15. Attached as **Exhibit 12** is a true and accurate copy of an October 20, 2023 declaration of Brian DeLay, attaching a copy of his expert report (including

exhibits) dated July 11, 2023, as well as a Correction to Rebuttal Expert Report of Brian DeLay, dated September 21, 2023, which was served on the parties.

16. Attached as **Exhibit 13** is a true and accurate copy of a report of Emanuel Kapelsohn (including exhibits), dated June 15, 2023, as well as Mr. Kapelsohn's separate case list and fee schedule, as received from counsel for *ANJRPC* Plaintiffs on June 16, 2023.

17. Attached as **Exhibit 14** is a true and accurate copy of the July 17, 2023 report of Emanuel Kapelsohn (including exhibits), as received from counsel for *ANJRPC* Plaintiffs on July 17, 2023.

18. Attached as **Exhibit 15** is a true and accurate copy of a supplemental letter (including exhibits) from Emanuel Kapelsohn, dated July 31, 2023, as received from counsel for *ANJRPC* Plaintiffs on July 31, 2023.

19. Attached as **Exhibit 16** is a true and accurate copy of the transcript of Emanuel Kapelsohn's August 4, 2023 deposition, including exhibits introduced during that deposition.

20. Attached as **Exhibit 17** is a true and accurate copy of the report of Ashley Hlebinsky (including exhibits), as received from counsel for *ANJRPC* Plaintiffs on June 16, 2023.

21. Attached as **Exhibit 18** is a true and accurate copy of the transcript of Ashley Hlebinsky's August 11, 2023 deposition, including the exhibit introduced during that deposition.

22. Attached as **Exhibit 19** is a true and accurate copy of the report of Clayton Cramer (including exhibit), dated July 17, 2023, as received from counsel for *ANJRPC* Plaintiffs on July 17, 2023.

23. Attached as **Exhibit 20** is a true and accurate copy of the transcript of Clayton Cramer's August 21, 2023 deposition, including exhibits introduced during that deposition..

24. Pursuant to the Court's March 16, 2023 scheduling order, the last day of all discovery in these matters was August 31, 2023. ECF 154. The deadline for all parties to produce affirmative expert reports was June 16, 2023. *Id.* The deadline for all parties to produce rebuttal expert reports was July 17, 2023. *Id.*

25. During the August 4, 2023 deposition of *ANJRPC* Plaintiffs' witness Emanuel Kapelsohn, the undersigned made several requests on the record for specific documents or data that Mr. Kapelsohn testified about, but did not provide and/or specify in his deposition or in his previously served reports. *See also Exhibit 16 passim.* Though these requests were placed on the record, counsel for *ANJRPC* Plaintiffs asked that State Defendants follow up in writing as to any request. *Id.*

26. Upon receipt of the deposition transcript, State Defendants promptly did follow up in writing. They did not follow up as to all specific requests made on the record during the deposition, but rather only a few of them. They served the letter via e-mail to counsel on August 8, 2023. Attached as **Exhibit 21** is a true and accurate copy of the letter, and e-mail delivering it to counsel on August 8, 2023. This e-mail also attached, as a courtesy, a copy of Mr. Kapelsohn's deposition transcript.

27. The August 8, 2023 letter demanded that *ANJRPC* Plaintiffs provide any responsive records to each of 7 requested items, or confirm that none exists for a particular item(s), by no later than August 11, 2023. *See Exhibit 21.*

28. Counsel for *ANJRPC* Plaintiffs provided no response by August 11, 2023. On that date, they advised verbally that they had overlooked the August 8, 2023 e-mail and attached letter, and would need more time to respond. They did not ask for a specific extended deadline to respond, nor was any specific extended deadline volunteered to them by counsel for State Defendants.

29. Thereafter, other than briefly discussing this issue with the undersigned and the Court during the Court's August 14, 2023 status conference, *see ECF 164*, counsel for *ANJRPC* Plaintiffs did not communicate at all with the undersigned regarding the August 8, 2023 letter or the items requested therein, until August 31, 2023—the last day of discovery—at approximately 8:44 p.m.

30. On August 31, 2023 at approximately 8:44 p.m., counsel for *ANJRPC* Plaintiffs served via e-mail a cover letter attaching, among other things, Mr. Kapelsohn’s “response” to State Defendants’ August 8, 2023 letter. Attached as **Exhibit 22** is a true and accurate copy of the e-mail received from counsel for *ANJRPC* Plaintiffs. Attached as **Exhibit 23** is a true and accurate copy of the aforementioned cover letter attached to that e-mail.

31. The “response” from Mr. Kapelsohn consisted of a letter, dated August 29, 2023, from Mr. Kapelsohn, providing written answers to questions as well as enclosing certain separate items. Attached as **Exhibit 24** is a true and accurate copy of this letter as received from counsel for *ANJRPC* Plaintiffs.

32. Attached as **Exhibit 25** are true and accurate copies of the following items referred to in Mr. Kapelsohn’s August 29, 2023 letter, as received from counsel for *ANJRPC* Plaintiffs on August 31, 2023: (1) a .pdf entitled “Rough Notes from Ballistic Testing”; (2) a spreadsheet file entitled “Penetration and Accuracy Test”; and (3) a .pdf entitled “ANJRPC Ballistic Testing – Sheetrock Wall Penetration (004).”

33. Also referred to in Mr. Kapelsohn’s August 29, 2023 letter were three .mp4 video files, entitled “Sheetrock Wall Penetration Testing,” “Shooting Glass Video 1 of 2,” and “Shooting Glass Video 2 of 2.” As these cannot be attached and served on the Court via electronic filing, true and accurate hard copies of these

videos, as received from counsel for *ANJRPC* Plaintiffs on August 31, 2023, will be provided to the Court and all parties, as **Exhibit 26**.

34. Also referred to in Mr. Kapelsohn's August 29, 2023 was a .pdf entitled "NSSF MODERN SPORTING RIFLE COMPREHENSIVE CONSUMER REPORT 2022." A true and accurate copy of this, as received from counsel for *ANJRPC* Plaintiffs on August 31, 2023, is attached as **Exhibit 27**.

35. On August 31, 2023 at approximately 8:44 p.m., counsel for *ANJRPC* Plaintiffs also served via e-mail an errata sheet for Mr. Kapelsohn's deposition, as well as a signature page from Mr. Kapelsohn signed and notarized August 29, 2023. Attached as **Exhibit 28** is a true and accurate copy of these two documents, as received from counsel for *ANJRPC* Plaintiffs.

36. On August 31, 2023 at approximately 11:59 p.m., the undersigned received from counsel for *ANJRPC* Plaintiffs another e-mail, this one enclosing a "Supplemental Rebuttal Expert Report of Clayton Cramer." Attached as **Exhibit 29** is a true and accurate copy of the e-mail as received from counsel for *ANJRPC* Plaintiffs.

37. Attached as **Exhibit 30** is a true and accurate copy of the "Supplemental Rebuttal Expert Report of Clayton Cramer," dated August 31, 2023, that was attached to the aforementioned e-mail, as received from counsel for *ANJRPC* Plaintiffs.

38. Counsel for State Defendants advised counsel for *ANJRPC* Plaintiffs of their objection to portions of their August 31, 2023 submissions. Following *ANJRPC* Plaintiffs' refusal to withdraw those submissions, State Defendants raised their objections to the Court via letter filed September 20, 2023. ECF 169. Following a September 27, 2023 conference, the Court entered a September 28, 2023 text order directing that State Defendants "may [] incorporate any objections to the materials at issue, and any requests that the Court strike or disregard them, into their forthcoming Daubert and summary judgment briefing." ECF 171.

39. On September 20, 2023, counsel for *ANJRPC* Plaintiffs served via e-mail an errata sheet and for Ashley Hlebinsky's August 11, 2023 deposition testimony. Attached as **Exhibit 31** is a true and accurate copy of the e-mail received from counsel for *ANJRPC* Plaintiffs. Attached as **Exhibit 32** is a true and accurate copy of the errata sheet that was attached to that e-mail, as well as a signature page from Ms. Hlebinsky signed August 29, 2023, as received from counsel for *ANJRPC* Plaintiffs.

40. On September 22, 2023, counsel for *ANJRPC* Plaintiffs served via e-mail an errata sheet for Clayton Cramer's August 21, 2023 deposition testimony. Attached as **Exhibit 33** is a true and accurate copy of the e-mail received from counsel for *ANJRPC* Plaintiffs. Attached as **Exhibit 34** is a true and accurate copy of the errata sheet that was attached to that e-mail, as received from counsel for

ANJRPC Plaintiffs. A signature page for that errata sheet from Mr. Cramer, signed September 22, 2023, was served via separate e-mail on September 22, 2023. Attached as **Exhibit 35** is a true and accurate copy of that signed signature page.

41. Attached as **Exhibit 36** is a true and accurate copy of the English statute from 1383 cited as 7 Rich. 2 c. 13 (1383), obtained by State Defendants.

42. Attached as **Exhibit 37** is a true and accurate copy of the English statute from 1396 cited as 20 Rich. 2 c. 1 (1396), obtained by State Defendants.

43. Attached as **Exhibit 38** is a true and accurate copy of the English statute from 1541-1542, cited as 33 Hen. 8, c. 6, § 2 (1541–1542), obtained by State Defendants.

44. Attached as **Exhibit 39** is a true and accurate copy of the New York statute from 1784 cited as 1784 Laws of N.Y. 627, ch. 28, obtained by State Defendants.

45. Attached as **Exhibit 40** is a true and accurate copy of the Massachusetts statute from 1783 cited as Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 46, obtained by State Defendants.

46. Attached as **Exhibit 41** is a true and accurate copy of the Maine statute from 1821 cited as 1821 Me. Laws 98, ch. 25, § 2, obtained by State Defendants.

47. Attached as **Exhibit 42** is a true and accurate copy of a press release from the New Jersey Office of the Governor entitled “Florio Signs Nation’s Toughest Assault Weapon Law,” dated May 30, 1990, obtained by State Defendants.

48. Attached as **Exhibit 43** is a true and accurate copy of the Chicago statute from 1866 cited as Laws & Ordinances Governing the City of Chicago 239 (Myers & Chandler 1866) , obtained by State Defendants.

49. Attached as **Exhibit 44** is a true and accurate copy of the transcript of James Curcuruto’s August 3, 2023 deposition in the action entitled *Wiese v. Bonta*, No. 2:17-cv-00903-WBS-KJN (E.D. Cal.), obtained by State Defendants.

I declare that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Daniel M. Vannella
Daniel M. Vannella
Assistant Attorney General

DATE: November 3, 2023